

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6201**

**BILL NUMBER: SB 76**

**NOTE PREPARED:** Nov 17, 2009

**BILL AMENDED:**

**SUBJECT:** Ephedrine and Pseudoephedrine.

**FIRST AUTHOR:** Sen. Deig

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** The bill makes ephedrine and pseudoephedrine Schedule V controlled substances.

It also repeals provisions concerning the establishment and operation of an electronic log to record the sale without a prescription of drugs containing ephedrine and pseudoephedrine.

**Effective Date:** July 1, 2010.

**Explanation of State Expenditures:** *Summary-* Costs for the incarceration of offenders convicted of Schedule V controlled substance offenses could increase if more people are incarcerated as a result of adding to the list of Schedule V controlled substances. Also, costs of incarceration could increase because racketeering influence and corrupt organization statutes apply to dealing controlled substance offenses and, depending on the circumstances of a controlled substance offense, portions of a sentence may not be suspended. Felony murder charges apply when a person kills another person while dealing a Schedule V controlled substance. Although not expected to have a fiscal impact on state agencies, adding to the controlled substance schedule may increase the number of driving license suspensions and professional license revocations (depending on the actions of the court and the professional licensing boards or state agencies involved).

On the other hand, revenues may increase because illegal controlled substances are subject to excise taxes. However, the expected increase in excise tax revenue is minimal. Also, criminal offense penalties may include fines and vehicles or other property involved in controlled substance offenses may be forfeited. Additionally, funds available for the Indiana State Police (ISP) to create an electronic log to record sales of drugs containing ephedrine and pseudoephedrine would be redirected to other allowed projects.

Background and Additional Information -

*Criminal Offenses* - Offenses concerning Schedule V controlled substances include:

- Dealing in a Schedule V controlled substance (IC 35-48-4-4)
- Corrupt business influence (IC 35-45-6-1)
- Distributing or dispensing a controlled substance (IC 35-48-4-14)
- Murder (IC 35-42-1-1)

The penalties for these crimes range from felony murder to a Class D felony, and, depending on the circumstances of the crime, these offenses include enhanced penalties. It is assumed that most offenders subject to felony murder charges related to Schedule V controlled substances would be subject to determinate sentences. The following penalties apply to these offenses.

Crime Class Category	Sentence Range	Average Length of Stay in a DOC Facility
Felony Murder	45 to 65 years; Death Penalty; or Life Imprisonment without Parole	19, 16, or 47.5 years*
Class C Felony	2 to 8 years	2 years
Class D Felony	6 months to 3 years, or Reduction to Class A misdemeanor	10 months
*The average length of stay for a determinate-term penalty is based on 2007 releases to parole and for the death penalty is based on 15 offenders sentenced to death who appealed execution and were executed. For life imprisonment without parole, the average length of stay is estimated.		

The average expenditure to house an adult offender was \$20,194 in FY 2009. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the incremental cost for medical care, food, and clothing is approximately \$4,818 annually, or \$13.20 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$75,050 in FY 2009.

*Vehicle or Property Seizure* - To the extent that the court would notify the Bureau of Motor Vehicles (BMV) and the BMV produces a clear title, costs for the BMV could increase minimally.

*Electronic Log* - Current law requires retailers selling drugs with ephedrine or pseudoephedrine to complete a paper or an electronic log. Currently, three retailers are electronically submitting data to the ISP. Records, both electronic and paper, are maintained for two years, unless a suspicious pattern of consumption is detected in the electronic records, at which point a record may be maintained for five years.

Handgun license fees in excess of \$1.1 M are available to the ISP to operate and maintain the central repository for criminal history, or to establish, operate, and maintain an electronic log of drug sales, if the funds are allotted by the State Budget Agency. No funds have been allotted or expended on the electronic log to date. (Indiana was given software by Tennessee for the electronic log.) In FY 2009, the total handgun license fee revenues were \$6.4 M, and the portion available for the two allowed purposes was approximately \$5.3 M.

**Explanation of State Revenues:** *Criminal Offenses* - If additional court cases occur and fines are collected,

revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for all felony offenses is \$10,000, and for a Class C misdemeanor is \$500. Criminal fines are deposited in the Common School Fund.

For a misdemeanor in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

*Excise Taxes* - Illegal Schedule V controlled substances are subject to a \$10 per gram or other unit excise tax. However, the revenues in FY 2009 were about \$200 from all schedule controlled substances excise taxes. The Department of Revenue does not pursue excise tax unless specifically requested by the prosecutor.

*Vehicle or Property Seizure* - The proceeds from the sale of a seized vehicle are distributed first to the county sheriff to cover sale costs, then to any person holding a valid lien or having an interest in the property, and then to the Common School Fund as ordered by the court.

**Explanation of Local Expenditures:** *Criminal Offenses* - If more defendants are detained in county jails prior to their court hearings or incarcerated in a county jail for a misdemeanor offense, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

*Murder Cases* - The total costs of a murder trial where the death penalty is sought is estimated at \$219,346, and for life without parole it is estimated to cost \$50,314. These estimates include attorney, jury, prosecutor, and law enforcement costs. The cost of trial for a penalty with a term of years in prison is not known.

*Vehicle or Property Seizure* - The prosecuting attorney may bring an action to seize a vehicle and may retain an attorney who is not a deputy prosecuting attorney.

**Explanation of Local Revenues:** *Criminal Offenses* - If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

*Vehicle or Property Seizure* - A county sheriff may retain proceeds from the sale of a seized vehicle to offset costs associated with its sale.

**State Agencies Affected:** DOC, ISP.

**Local Agencies Affected:** Trial courts, local law enforcement agencies.

**Information Sources:** DOC; ISP; Doug Gosser, Indiana Sheriffs' Association, 317-356-3633.

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